

Questions from Juvenile Legislative Update

CHILDREN'S DIVISION/COURTS

I. Assessment

1. HB 1211 – 211.141.4 – Does this really mean a risk and needs assessment must be done on all referrals? Informal and formal? CA/N and SO/Del?

*A: RSMo 211.141, section 4 now requires **BOTH** risk and **needs** assessments to be completed on youth referred to the Juvenile Court for **status or law violations**, whenever an official Informal Adjustment Conference is held in accordance with Supreme Court Rules, or if a petition is filed in the Juvenile Court to formally process the matter. The assessment is to be written on a standardized form approved by the Office of State Courts Administrator.*

2. What reports will require the JO to become involved—CD Assessments? CD Hotlines? Only JO referrals?

A: Not clear what the question is. Involved in what?

II. Parent Location

1. When will CD officer have access to Federal parent Locator Services?

A: They have always had access. This simply expanded access the services to the court as “authorized” personnel.

2. Does the CD have specific procedures as to what they have to do to do a “diligent search” for unknown/missing parents? Form? Checklist? Report?

A: No response

3. Is Parent Locator available statewide?

A: Yes, Since September 1, 2004

III. Putative Father Registry

1. What if using 211 grounds in the adoption proceeding?

A: It is my belief (until we get an appellate opinion on it) that if you are doing a 211 TPR you still need to serve as usual. The part about failure to assert paternity by either filing the notice, the acknowledgment or the UPA action seems to only apply to 453 adoptions.

IV. FST Meetings

1. FST meetings—If the Division has a service provider with whom the parents/guardian disagree and the parents/guardian refuses to come if the provider is there, does the parent have the right to deny provider's presence at the FST meeting?

A: *No. Nothing in the statute gives the parents rights to exclude someone at the FST meetings that could provide information about the child.*

2. Can FST be waived if parties agree to waive?

A: *No, but one can be scheduled and no one can show up for it. There is nothing that requires the parties to meet, but a meeting must be held.*

☛ **Does this apply to initial placements or all placements for the life of the case?**

A: *FST meetings must be held prior to any change in placement, not just original placement, as long as the child is in the custody of the Children's Division*

☛ **Does it apply to existing cases?**

A: *Yes. It applies to all placements after August 28, 2004.*

☛ **What if parties disagree with placements?**

A: *It should be recorded as to who disagrees with the placement and for what reason if applicable.*

3. What if the parties attending a FST are not willing to sign the attendance form at the end of the meeting? (Ref 210.762)

A: *Record who will not sign, but that he or she did attend.*

4. If parents do not give permission to invite grandparents (who are not the placement provider), can other team members invite the grandparents to the FST?

A: *Yes. They can be invited.*

5. If the father does not want the maternal grandparents at the FST but the mother does, do they have the right to be there?

A: *Yes. Neither parent has a veto power over who is at the meeting.*

6. Who is responsible for notifying parent's attorney of initial FST? Does FST have to be rescheduled if one of the parents did not have attorney at first FST?

A: *If there is no attorney, no they do not need to be invited. After an attorney makes their appearance, the attorney should always be invited.*

7. 210.160.2 vs 210.762.2—Is the Guardian ad Litem a mandatory attendee or invitee to the FST meeting? In other words, if CD has invited and given notice to

the GAL of an FSTM, can the FSTM be held if the GAL says the date of FSTM does not work for the GAL, but the date works for other parties to the case?

A: Yes. The GAL is a mandatory invitee.

8. Can the tape recording of an FST meeting be admitted into court as evidence?

A: If a foundation can be laid, it could be admissible.

9. The FST guidelines does not state a Juvenile Officer. If the JO is not a part of the team, how does that effect response of JO?

A: No response.

V. School interview

1. Can you interview in the school if unsuccessful at notifying the parent? Or are they stayed? Till after notice?

A: If the parent cannot be located, and reasonable efforts have been made to inform the parents, the child may be interviewed.

2. Does a parent have to be notified before interviewing a child at school?

A: If the parent is not the alleged perpetrator, they must be informed before the child is interviewed.

3. With respect to 210.760, please clarify whether or not a law enforcement officer can authorize temporary protective custody of a child at school and remove them knowing that the child could be placed in foster care.

A: 210.760 exempts protective custody taken under, 210.125, which includes law enforcement.

VI. Transporting to School

1. If the child is to attend the same school district, 1) who provides transportation and 2) who pays for transportation? (This question came up several times)

A: No response.

2. Who has responsibility for transporting (or paying) if child remains in the district? The assumption is the child no longer is a “homeless youth” and therefore doesn’t meet requirements for McKinney-Vento, however CD does not have the staff nor funds for transportation.

A: No response.

3. If it is agreed that the child should remain in home school, who has to provide transportation daily to the school?

A: *No response.*

VII. Relative Placement

1. Does a relative in a child's current school district take precedence over a relative in another school district? Does the child's preference play a part in this?

A: *There are no preferences of relatives built into the statutes. Which relative the child is placed with, will be determined on a case by case basis.*

2. Regarding 210.565, what constitutes a relative? (2nd cousin, 3rd cousin?) What is the degree of relation?

A: *No degree is listed. A relative is a relative.*

3. Relative placement preference applies at original placement only or throughout the case?

A: *Throughout the case.*

4. If child is placed with relatives and they want them moved immediately, would it be considered an emergency for criminal checks on another relative home?

A: *This is not necessarily an emergency placement. It is unclear if the child is currently under CD custody. But it could qualify for an emergency placement under the statutes.*

5. If children are to be placed immediately with family, what must CD do prior to placement to ensure the safety of the children, besides CA/N check, criminal check and walk thru of home?

A: *No response.*

6. If CD takes custody of a child and can not locate a relative until 4-5 days later, can the child be placed with a relative without fingerprinting and a home study as soon as a relative is located?

A: *No response.*

7. Can it be decided that a relative placement is not in the best interest (welfare) of the child in the event that the relative live far away perhaps even in another state especially if the goal is reunification with the parent?

A: *That is up to the court and the judge to make that finding.*

VIII. Non-Offending Parent

1. When placement for non-offending parent, what determines the “history” of criminal behavior drug alcohol abuse, etc.?

A: The facts will determine whether there is a history or not.

2. Section 1: So, if I have a court order of joint legal and physical custody and 1 parent non-offending, child goes automatically to non-offending, assuming they meet other requirements?

A: Yes, assuming the non-offender meets other requirements.

3. Under section 211.037, if the parents are maintaining separate households and the non-offending parent has no history of criminal behavior, etc., should the child be returned to the non-offending parent promptly, without the benefit of a home study, etc., even if the non-offending parent has never had any custody or visitation rights to the child?

A: Yes, although a phase-in so the child gets to know the non-offender seems appropriate, although the phase in should be started immediately and the phase-in should be carried out promptly.

4. With placement with a non-offending parent, how does it apply with keeping siblings together—do you still place with the non-offending parent?

A: Yes, although the non-offender would have the right to determine what is best for his or her child and whether or not to continue to allow contact (it is assumed that you meant half-siblings that are placed in another alternative home).

5. What if non-offending parent knew of incident of abuse by offending parent, did nothing, and it happened again, resulting in removal? (surely that is enough under 211.037 for child to stay out of parent’s custody)

A: Depends on the facts, the type and extent of the previous abuse, etc. There are no automatic ways to exclude the rights of the non-offending parent.

6. How does Section 1 apply when you have a non-offending parent who does not have a relationship with the child? For example, we remove and place with Grandma then dad shows up and child does not know dad, to we have to place with dad?

A: Seems that a brief phase-in “get to know” period is appropriate (and should start right away), after which full placement with the non-offender is required. The answer here is very fact dependent and each situation is different. Appropriate parents always have a superior right than anyone else to raise their own children.

7. What if non-offending parent resides in another state or country, or does not have physical custody in a divorce decree, yet meets all the requirements?

A: ICPC still applies when you want to place a child out of state.

8. Section 1: Who determines and makes placement with the non-offending parent? Is this based on a judicial ruling? Does JO determine? If CD has custody, does CD make placement?

A: *Any of the above; can be JO or CD if prior to court, or the court at the PC hearing.*

9. Section 1—Do we worry about custody? Do we concern ourselves with prior visitation and relationship with non-offending parent?

A: *See answers above.*

IX. Reunification

1. Under 210.117 regarding the reunification of a child in a home of a convicted felon; can a child be returned home if the child was not the victim, the victim is another child that was in the home?

A: *No. It does not matter what child is the victim. If a child was the victim of any of the listed crimes than the child may not be returned home.*

2. If household member convicted of attempt of 566 crime, can child be place back in the home? (example: attempted incest conviction under 564)

A: *If the crime convicted of is a 564 crime, than yes the child can be returned home. It does not however, mandate that the child be returned home.*

3. In the event a child is returned to the parents after a PC hearing, what effect, if any, does that have on further jurisdiction by the court?

A: *No response.*

X. TPR

1. TPR under 452.455 does not require an adoption petition, so file in the domestic case?

A: *Not clear from the statute, but if it relies on 211 grounds (as we theorize it will) it would be filed in the court having jurisdiction to hear 211 TPRs (i.e. the juvenile division), not the domestic court.*

2. Under 452.455, can a private person file to terminate the parental rights of a non-custody parent without adding a second count for adoption?

A: *Yes.*

XI. Background Checks/Fingerprinting

1. Are fingerprints required on step grandparents or step siblings?

A: *Yes. Only related by blood is exempted.*

2. In reference to 210.482, does the requirement for criminal and CA/N background checks for all persons in the household over age seventeen include children who previously existed in the home and later reach the age of 17? Does it include adjudicated minors over 17 who have been placed in the home by Children's Division?

A: It includes all people over 17 at time of placement. If the home is already a licensed foster home than the emergency checks are not necessary.

3. Who submits the prints to MHP and FBI?

A: No response.

4. Cost of fingerprinting—who and how is this billed to “the state” and who is “the state”?

A: No response.

5. Are juvenile courts going to be charged for criminal background checks?

A: No response.

XII. Open Hearing/files

1. Pleadings open but child's name redacted, that means files aren't open, but court clerks must make a copy and black out child's name?

A: Section 211.319.4 seems to require that procedure.

2. Can we have a court file and a separate “shadow file” open to the public that contains redacted pleadings/order etc. and only those items available to the public?

A: Procedures and rules are currently being developed. The requirements of 211.319 require that only pleadings and orders are available to the public and certain information must be redacted so for those cases in which the file is requested, you will have a second “redacted” file.

A: Seems like a lot of trouble to do it in every case. The “we” in your question is the court clerk, I assume, as 211.319 does not apply to the files at the juvenile office; only to the court's files kept at the clerk's office.

3. Regarding 211.139—Open Hearings—Are CD staff, GALs, CASA and attorneys waiting to be heard in other cases considered “General Public? And if not may they remain in court room during a hearing in which they aren't involved, even if testimony of child or after order to exclude.

A: If those people are not involved in the case in question, they are on the same standing as the general public.

4. Will open juvenile records eventually be on CaseNET?

A: NO

XIII. GALs

1. Does GAL have a right to be present at a video interview?

A: What context?

2. GAL fees only for adoptions? (453.025)

A: No response.

XIV. COURTS/MISC

1. What does “subject to any federal authorization” mean?

A: No response.

2. Rule 119 – Must notice of next court date be in writing and provided in writing that day?

A: Rule 119.01(d) provides that upon “conclusion of each hearing, the juvenile officer shall provide written notice. . . .” I read that to mean upon conclusion – i.e. before the parties leave the building. This view is supported by the last sentence which provides that mailed notice is not required for any party to whom notice was provided “upon conclusion of the immediately preceding hearing.”

3. For clarification: While discussing 111.14, was it stated that the court order and the new court date shall be handed out to the parties immediately after the court hearing is over? If so, is that a requirement or recommendation?

A: The rule uses the term “shall” – see above answer.

4. When a case review hearing is scheduled at the adjudication/disposition hearing and the date and time are in the order, does the JO have to file a motion to review and provide additional notice to parties?

A: By case review, I assume you mean a post-dispositional review hearing. If so, holding such a hearing seems mandatory and I am not sure you need a motion to review. On the other hand, being a lawyer, I always feel more comfortable with some sort of pleading. Certainly it seems that if you want a change to the previous order, a motion to modify might be in order.

5. For Juris hearing and reviews and disposition hearing, does “on the record” require the presence of parties in the courtroom or will a stipulation signed by all parties and filed with the court accompanied by a docket entry in the court file suffice?

A: On the record means just that – a court reporter or recording device making a record – thus I would say you should appear and go “on the record” and submit your stipulation or agreement or whatever. Some parties may certainly not appear or waive appearance, but it seems to me that the agreement should allow admission into evidence of any report or whatever the court is basing its approval of the agreement upon. Remember that ASFA requires judicial findings, and the only way the court can make “findings” is to receive some sort of evidence – that may be reports and agreements, but

there must be something there in terms of evidence to support the findings and order of the court.

6. Do time frames begin when the court orders the PC or from emergency or temporary PC order by doctor, police or JO?

A: When the child is removed.

7. Can you file for no more reasonable efforts under the “compelling reason” if the parent has been convicted under 566 and 568?

A: Only if the crimes in question fit under 211.183.7.

8. Please clarify the exception on 568.060, i.e., convictions

A: No response.

9. How do you reconcile Section 1.1 with 210.117?

A: I was not aware of a conflict between 211.037 and 210.117.

10. What certain crimes are cited in 210.117?

A: They are listed in the section.

11. If parent/custodian has been convicted of offense listed in 210.117, is the court prohibited from returning the child even at the PC hearing or prior to adjudication?

A: Yes.

12. 210.482—Is this only when PC taken or voluntary placement by family? Who is responsible for obtaining the fingerprints in this case?

A: No response.

13. May the attorney for a parent waive a protective custody hearing?

A: The hearing is mandatory. The parties may go on the record and AGREE to continued PC or something, but a hearing must be held and findings must be made.

14. Is the funding issue the only consequence of not making contrary to welfare finding in first order?

A: No. Failure violates Supreme Court Rule and Missouri law. It reflects poorly on your ability to follow a simple instruction of having the finding in the first order of removal and would put your job in jeopardy if I were in charge. Pre-print it in your form so you don't forget!!!

15. Is the 14 days on the PCH continuance excluding Sat, Sun, and holidays too?

A: Rule 44 addresses time computation. The fourteen days includes Saturdays, Sundays and legal holidays, but if the last day falls on such a day, then you have until the close of business on the next business day after the Saturday, Sunday or legal holiday. Rule 44.01(a), Rule 110.04.

16. Should DJO or CD advise the juvenile of his right to request that the questioning cease or have parent present?

A: Yes, or perhaps Law enforcement, if they are questioning without the JO present. This answer assumes the question refers to Section 211.059.3, and not 211.059.1 and Rule 122.05, related to delinquency.

17. Pursuant to 211.032, will written permanency reports be required from the Children's Division two weeks prior to every 90-day permanency review?

A: No response.

XV. SHAWN

1. What is Shawn McCarver's interpretation of 211.031.4?

A: I have no interpretation of it apart from its wording at this time. It imposes on the JO certain duties and requires any violation to be reported to the PA.

2. For Shawn: Are you saying if mom names a father, but he is not on the P.F.R., do we have to notify him of Juvenile Court hearings? Or is this only in adoptions?

A: The discussion at the seminar related only to adoptions under 453 as amended by HB 1453.

3. How does Shawn think 211.037 effects cases like In re EJ (sp?) where courts have held that jurisdiction could be taken to address risk when circumstances show that that abuse occurred and the parent(s) knew or should have known it occurred? (or the TPR provision similar to that)

A: As in all juvenile cases, the JO bears the burden of proof. If it can be shown by evidence (as opposed to a hunch, a feeling or whatever) that mom, for example, knew of the sexual abuse of a child by step-father, and failed to protect the child, she certainly does not qualify as a non-offending parent.

XVI. OSCA

[All of these questions have all been referred to the Family Court Committee for review/recommendations.](#)

1. Will OSCA be changing the PC order and Jurisdictional order to require an explanation of the "emergency" circumstances requiring removal?

2. Will OSCA be developing different orders (forms) for case reviews and post permanency hearings? Or will we still have a 5-page order to complete every 90 days?

3. What are the consequences of not being in compliance with time standards?

XVII. CD/DMH/COURTS

1. How do BJC and the CD cooperate in placing a child with mental health issues?

A: CD should make a referral to BJC, or any CD to the local community mental health center. The CMHC will do an assessment, and if an out of home placement is needed to meet the child's psychiatric needs, the CMHC can work with CD in locating and/or partially or fully funding the placement, and can assist in monitoring that placement in meeting the youth's psychiatric needs to assure that it is the least restrictive and most appropriate environment as well as prepare for aftercare from the facility, in collaboration with CD.

2. Four-Part Question:

- 1. Is the situation under 208.204 and 210.108 such that if child already in care of DFS and Juvenile office because of mental health difficulties of the child (absent parents having unfitness) and the case is identified under 208.204, then custody returned to parents with the court case closed?**

A: Once legal custody is restored to the parent the "court case" would be closed.

- 2. Is this our carrot with legislature for all the expedited PC hearings?**

This question is unclear.

- 3. Does this require a voluntary placement for parents under 210.108 to remove juvenile office legal custody?**

A: Once legal custody is restored to the parent, should a child continue to require placement to meet their mental health needs such a placement would continue and absent any court jurisdiction it would be deemed "voluntary". It would be no different than any number of children today who remain in their parents' legal custody while being served/treated in a DMH program or placed with a DMH provider.

- 4. What change will result if parent unfit but does a voluntary placement with a relative male guardian?**

A: This question is unclear specifically as it relates to "... voluntary placement with a relative male guardian ?". (?)

XVIII. DMH

1. Who in St. Louis County does a parent contact to explore starting the diversion protocol? (please contact Carl Seltzer, Legal Services of Eastern MO, cseltzer@swbell.net)

A: If a parent is considering relinquishing custody of their child solely to access mental services, the referral to BJC Behavioral Health is typically made through the juvenile office or St. Louis County CD. That kicks in the diversion protocol. However if a parent has not yet made attempts to obtain services through BJC Behavioral Health, the parent can contact BJC/or the appropriate administrative agent for the Dept. of Mental Health to access assistance and services.

2. Please explain in detail how the CA/N history effects the children that my come under 1003. ie, perpetrator no longer in home, no past probable cause but several reports, etc.

A: The FST should be exploring these issues when determining if the child should be returned to the parents custody. If the child was placed in CD custody solely to access mental health services, the situation should be reviewed as outlined. The FST needs to explore issues related to the child's safety and the home environment so that appropriate safeguards and services can be put in place if the child is returning home as well as to the parent's custody.

3. With regard to “voluntary placement,” what happens when the family/legal guardian disagrees with the mental health assessment? (For example, the mental health agent may assess a need for case management and other out-patient services but the family is insistent on child going to residential placement out of the home??)

A: The parent/family is to be an active participant in developing the plan. Through the assessment the parents' concerns related to the child being in the home and need for out-of-home placement should be addressed by the plan. It may be that the parent is currently overwhelmed and cannot manage the child immediately, but with some respite to allow the family a “break” and development and implementation of the intensive community based plan the parent would feel more prepared to deal with the child in the home. If the DMH provider completing the assessment and developing the plan with the parents has concerns related to abuse/neglect the provider is to contact the CD for a screening, and involvement in review of the plan.

XIX. OFFICE OF CHILD ADVOCATE

1. Will the child advocate review FST decisions and case plans?

A. If we receive a complaint that CD policy and procedure were not followed in developing the decisions or case plans, we would review that.

2. How do we contact the Office of Child Advocate?

A. Our toll free number is 866-457-2302.

XX. DESE

1. What is DESE's position and procedures for a child attending a school when parent or child or foster parent does not reside in their district? 211.031.7(2)

2. How do we get the school districts to allow kids to remain in their school if they don't live in the district?